

1 HOUSE BILL NO. 89

2 INTRODUCED BY A. OLSON

3 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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5 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE SCHEDULE FOR COMPLETING TOTAL
6 MAXIMUM DAILY LOADS FOR STREAMS LISTED IN 1997; AND AMENDING SECTION 75-5-703, MCA."

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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10 **Section 1.** Section 75-5-703, MCA, is amended to read:11 **"75-5-703. Development and implementation of total maximum daily loads.** (1) The department
12 shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum
13 daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority
14 ranking established by the department under 75-5-702. Each TMDL must be established at a level that will
15 achieve compliance with applicable water quality standards and must include a reasonable margin of safety that
16 takes into account any lack of knowledge concerning the relationship between the TMDL and water quality
17 standards. The department shall consider applicable guidance from the federal environmental protection agency,
18 as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.19 (2) In establishing TMDLs under subsection (1), the department may establish waste load allocations
20 for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may
21 allow for effluent trading. The department shall, in consultation with local conservation districts and watershed
22 advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing
23 established practices and programs for nonpoint sources.24 (3) Within ~~40~~ 15 years from May 5, 1997, the department shall develop TMDLs for all water bodies on
25 the list of waters that are threatened or impaired, as that list read on May 5, 1997. This provision does not apply
26 to water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702.
27 The department shall establish a schedule for completing the TMDLs within the ~~40-year~~ 15-year period
28 established by this subsection. The schedule must also provide a reasonable timeframe for TMDL development
29 for impaired and threatened water bodies that are listed subsequent to May 5, 1997, and are prioritized as set
30 forth in 75-5-702.

1 (4) The department shall provide guidance for TMDL development on any threatened or impaired water
2 body, regardless of its priority ranking, if the necessary funding and resources from sources outside the
3 department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The
4 department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the
5 department, the department shall ensure implementation of the TMDL according to the provisions of subsections
6 (6) through (8).

7 (5) For water bodies listed under 75-5-702, the department shall provide assistance and support to
8 landowners, local conservation districts, and watershed advisory groups for interim measures that may restore
9 water quality and remove the need to establish a TMDL, such as informational programs regarding control of
10 nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements
11 voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not
12 reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in
13 a way that gives credit for the pollution reduction efforts.

14 (6) After development of a TMDL and upon approval of the TMDL, the department shall:

15 (a) incorporate the TMDL into its current continuing planning process;

16 (b) incorporate the waste load allocation developed for point sources during the TMDL process into
17 appropriate water discharge permits; and

18 (c) assist and inform landowners regarding the application of a voluntary program of reasonable land,
19 soil, and water conservation practices developed pursuant to subsection (2).

20 (7) Once the control measures identified in subsection (6) have been implemented, the department
21 shall, in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the
22 waters that are subject to the TMDL to determine whether compliance with water quality standards has been
23 attained for a particular water body or whether the water body is no longer threatened. The monitoring program
24 must be designed based on the specific impairments or pollution sources. The department's monitoring program
25 must include long-term monitoring efforts for the analysis of the effectiveness of the control measures
26 developed.

27 (8) The department shall support a voluntary program of reasonable land, soil, and water conservation
28 practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that
29 are subject to a TMDL developed and implemented pursuant to this section.

30 (9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not

1 achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the
2 department shall conduct a formal evaluation of progress in restoring water quality and the status of reasonable
3 land, soil, and water conservation practice implementation to determine if:

4 (a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water
5 conservation practice is necessary;

6 (b) water quality is improving but a specified time is needed for compliance with water quality standards;

7 or

8 (c) revisions to the TMDL are necessary to achieve applicable water quality standards.

9 (10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

10 (a) point source discharges to a listed water body may commence or continue, provided that:

11 (i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent
12 applicable for the particular discharge, the provisions of 75-5-303;

13 (ii) the discharge will not cause a decline in water quality for parameters by which the water body is
14 impaired; and

15 (iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

16 (b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

17 (c) new or expanded nonpoint source activities affecting a listed water body may commence and
18 continue ~~provided if~~ those activities are conducted in accordance with reasonable land, soil, and water
19 conservation practices;

20 (d) for existing nonpoint source activities, the department shall continue to use educational nonpoint
21 source control programs and voluntary measures as provided in subsections (5) and (6).

22 (11) This section may not be construed to prevent a person from filing an application or petition under
23 75-5-302, 75-5-310, or 75-5-312."

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